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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,087	01/29/2002	Haruko Toyoshima	0445-0315P	2505
2292	7590	07/22/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/058,087	Applicant(s) TOYOSHIMA, HARUKO	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-26-04 has been entered.

Claim Language Interpretation

2. Lines 16-19 of claim 1 do not require the members be stretched from a nonstretched state to a stretched state and then fixed to the areas in the stretched state and then released from such state allowing contraction to the nonstretched state. These lines only require the fixing of a temporarily or permanently stretched material to the areas and the areas being able to contract due to the disposition of such stretched material. It is further noted that the claims do not require the under-waist portion positioned right below the waist opening portion and the areas extending outwardly from the absorbent be one and the same, i.e. coextensive, or the underwaist elastic members only being in the underwaist portion. It is also noted that line 21 of claim 1 only requires (i) or (ii) but not both. Finally it is noted that where said pair of tapes exits is interpreted to be the side edges absent specific claiming of the location and dimensions of the exit location.

Claim Rejections - 35 USC § 112

3. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As set forth supra the claims no longer require that the under waist elastic members are disposed in the at least a middle of an area where the absorbent member exists, when such members are not where the tapes exit. Where is the support for such claimed structure? While there is support for the combination of (i) and (ii) together or (i) alone, such is not so claimed. Similarly, where is the support for the combinations of the claims depending from claim 1, and thereby also incorporating such changes?

Claim Rejections - 35 USC § 102

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al '584, and thereby Buell et al '274.

See Figure 2, topsheet 24, backsheet 22, core 28, fastening tapes 92, landing zone 44, waist elastic member 34, under-waist members 90, leg elastic members 432. See also col. 14, lines 27-61, col. 15, line 16-col. 16, line 24 of Clear et al, and thereby Buell '274 at, e.g., col. 35, line 57-col. 36, line 30, especially col. 36, lines 2-5, i.e. the members 90 can be associated with the topsheet and backsheet in the tensioned condition, i.e. stretched state, col. 51, lines 3-64, esp. lines 56-64, Figure 1, col. 45, lines 23-30, col. 15,

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lines 16-27, col. 23, lines 13 et seq, col. 33, lines 51-53, col. 42, lines 44-52, col. 43, lines 14-38. It is also noted that 1N is about 150 gf.

Response to Arguments

5. Applicants remarks on page 4 with regard to new matter have been noted but are deemed not persuasive for the reasons set forth supra. It is noted again that the Taiwanese notice of rejection filed 11-26-03 was not considered since a translation thereof was not provided. Applicant's provisional request for an interview on page 4 has been noted. Applicants should contact the Examiner by phone to discuss the request. Note a PTO-413A would be required prior to such an interview. Applicants remarks on pages 5 incorporating the remarks of 9-8-03 with regard to the elastic members and the portion having the tapes has been considered but are still deemed nonpersuasive because as set forth in the rejection such members are considered 34 and 90 and 34 can be provided at or on both of the end portions and 90 is provided in the rear waist portion, i.e. both are in the portion which also has fastening tapes. Applicant's arguments with regard to the extension stress are still deemed not persuasive in light of Buell at, e.g., col. 45, lines 23-30 and incorporated by Clear which also teach the embodiment of the side panels having extension forces greater than those of the waistband, i.e. the extension force of 90 can be greater than that of 34. Finally, Applicant's arguments with regard to the untensioned condition are still deemed nonpersuasive in light of Buell at, e.g., col. 36, lines 2-5, and incorporated by Clear, i.e. the members 90 can be applied in a tensioned or stretched condition. In response to Applicant's reiteration of the remarks filed 2-19-04, e.g. on pages 10 et seq, such remarks have been considered but are still deemed narrower

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than the teachings of the prior art. For example: 1) It is noted that the '584 incorporates all of the '274 disclosure, see col. 14, lines 47-52 of '584. 2) '584 at col. 14, lines 38-52, teaches a rear or second waist region having an elastic waist feature constructed as taught by '274 and '274 at col. 12, lines 24-27 teaches waist feature 34 can be in both end portions and at col. 12, lines 52-53 and 62-63 teaches such elastic waist features include elastic waistband 35. 3) 274' at col. 45, line 45-col. 46, line 31 teaches that the extension forces of the waist band can be greater than, equal to or lesser than those of the side panel and the side panel may have extensibility that varies longitudinally from the end edge to the leg edge, i.e. the portion of the side panel which is adjacent the waist edge can have an extension stress same as, lesser than or greater than the waist band and greater than or less than the remainder of that side panel between that portion and the leg edge, i.e. the remainder of the side panel or under waist portion is taught as having a greater extension stress than the waist opening portion. Finally it is noted that Applicant did not address the remarks set forth in the Advisory action nor provide any arguments as to the added claim language and the prior art. It is noted, however, that neither Buell nor Clear have elastic members at the edges where the tapes exit.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 20, 2004